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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,209	07/25/2006	D. Ion Degeratu	PI115276	7152
40401	7590	09/08/2009		
Hershkovitz & Associates, LLC			EXAMINER	
2845 Duke Street			LIPTZ, JEFFREY BRIAN	
Alexandria, VA 22314				
			ART UNIT	PAPER NUMBER
			3769	
NOTIFICATION DATE	DELIVERY MODE			
09/08/2009	ELECTRONIC			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@hershkovitz.net  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/587,209	DEGERATU ET AL.
	<b>Examiner</b> JEFFREY B. LIPITZ	<b>Art Unit</b> 3769

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 5/26/2009.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 4-12 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 4-12 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 5/26/2009 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/02505)  
Paper No(s)/Mail Date 6/12/2009

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments, filed May 26, 2009, with respect to claims 4-12 have been considered but are moot in view of the new grounds of rejection. The previous objections to the specification and drawing are withdrawn; however, new objections are made.

### ***Drawings***

The drawings were received on May 26, 2009. Applicant's arguments see Applicant's Arguments/Remarks filed May 26, 2009, with respect to the Drawing Objections have been fully considered and are persuasive. The objection of the drawings has been withdrawn. However, these amended drawings are not yet accepted.

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because Figure 3 is unclear. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fan outside the case must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

Applicant's amendments to the specification in the Specification filed May 26, 2009, with respect to the Specification Objections have been fully considered and are persuasive. The objection to the specification has been withdrawn.

The amendment filed May 26, 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added

material which is not supported by the original disclosure is as follows: the fan is located outside of the case.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Objections***

Claim 12 is objected to because of the following informalities: This claim depends from a claim that has been cancelled. Examiner has examined claim 12 as if it depended from claim 4, since all but one of the claims depend from claim 4. Appropriate correction is required.

Claims 11 and 12 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. These claims recite limitations, which do not alter a structure of the invention or add an element to the structure. Therefore, these claims do not further limit the subject matter of claims 1 and 4 from which they depend.

***Claim Rejections - 35 USC § 112***

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This claim depends from a claim that has been cancelled. Therefore, it is unclear what elements or modifications of elements are included in the invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Przybilla (WO 9213597).

Regarding claim 4, Przybilla teaches a light source (6), an optical filter (2) mounted on the objective (Figure 1), a case (1), a support (unlabeled but designated as the vertical line connecting the light source 6 and the foot plate 5) set on a support or foot plate (5) that bears the light source (6) ventilated by a fan (10) set inside the case (1), a concave mirror (7) set on an axial handlebar or axial guide (8) connected to the wall of the case, a rotary shutter disc (14) having two orifices "c", wherein the disc (14) is mounted on the same wall as the optical filter (2). The top orifice is illustrated as located in coaxial relationship with the optical filter (Abstract and Figure 1).

Przybilla also teaches a slit regulating device (15) including a motor (13) and two reflector cylinders (12), wherein the processed light flux is made of rays reflected by the concave mirror 7 and reflected rays pass through the orifices "c" of the shutter disc (14) and straighten to the objective (unlabeled but section protruding on the upper left containing the optical filter 2; Abstract).

Regarding claim 10, Przybilla teaches that the optical filter (2) permits passage of a light containing a wavelength of 650 nm, indicating that the light source has a frequency in Applicant's range (Page 4, Last paragraph).

Regarding claims 11 and 12, Przybilla teaches a motor (11) that controls the two reflector cylinders (12), which is capable of modulating the light flux to have a lower frequency, since the motor has a variable circular movement (Top of Page 4).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Przybilla.

Regarding claim 8, Przybilla does NOT teach that the fan is located outside of the case, as claimed; however, Examiner interprets any element as being capable of being located outside of the case. In the instant case, a tube delivering positive pressure to the inside of the case or some other air conditioning apparatus could be attached to the case. Furthermore, if it were considered desirable for any reason to obtain access to the part of the case where the fan was housed, it would be obvious to make the fan separate for that purpose (In re Dulberg, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)).

Claims 5, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Przybilla (as discussed *supra*) in view of Anderson et al. (US 2003/0036751 ), hereinafter Anderson.

Regarding claim 5, Przybilla teaches that the rotating speed of the shutter disc (14) is rotated by an engine (15), that the shutter is ventilated by a fan (10), and

controlled by a modulator of the light flux (12/13). Przybilla does NOT teach that the modulator or light flux is digital, as claimed. Attention, however, is directed to Anderson who teaches a digital modulator of light flux (Paragraph [0206]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Przybilla to incorporate the digital modulator of Anderson, because doing so would increase precision and control over the rotation speed of the shutter.

Regarding claims 6 and 7, Przybilla does NOT teach that that a computer controls the entire apparatus' handling and coordinating as claimed. Attention, however, is directed to Anderson, who teaches a computer control system (Paragraph [0076]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the computer control system of Anderson to control the coordination and handling of the apparatus, because doing so will enable a user easily use data from other programs to automate or input illumination settings.

Claims 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Przybilla as applied to claim 4 above, and further in view of Fairbank (2504312).

Przybilla does NOT teach that the slit modulator can alter the size of the aperture, as claimed. Attention is directed to Fairbank who teaches photographic apparatus. Fairbank teaches a rotating shutter or diaphragm with apertures (Column 2, Lines 53 and Column 3, lines 1-14). The sizes of the apertures correspond to the rotational frequency of the shutter, since the variable apertures are on the shutter, and require rotation of the shutter in order to switch them. The sizes of the apertures are also related or proportional to the desired exposure values which are directly related to

the intensity of the light flux (Column 1, Lines 28-42). It would have been obvious to include the variable apertures of Fairbank with the invention of Przybilla since it would allow regulation of the beam diameter that reaches the objective, and thus control over the intensity of the emitted light.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY B. LIPITZ whose telephone number is (571)270-5612. The examiner can normally be reached on Monday to Thursday, 10 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry M. Johnson III can be reached on (571)272-4768. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JEFFREY B LIPITZ/  
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